

Exhibit 2

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII
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4 WAYNE BERRY, a Hawaii Citizen,) CIVIL NO. 03-00385SOM
5 Plaintiff,)
6 vs.)
7 HAWAII EXPRESS SERVICE, INC.,) - VOLUME 4 -
et al.,)
8 Defendants.)
9 _____)

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11 TRANSCRIPT OF PROCEEDINGS

12 The above-entitled matter came on for hearing on
13 Thursday, March 2, 2006, at 9:24 a.m., at Honolulu, Hawaii,

14 BEFORE: THE HONORABLE SUSAN OKI MOLLWAY
United States District Judge

15 REPORTED BY: STEPHEN B. PLATT, RMR, CRR
Official U.S. District Court Reporter

16 APPEARANCES: TIMOTHY J. HOGAN, ESQ.
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24 Attorneys for Defendant
Post Confirmation trust
for Fleming companies, Inc.

1 nothing for your business?

2 A. Because under our understanding, it was okay to use, so
3 we used it. Subsequently by taking out the changes that we
4 made, it didn't work very well, so we did, in fact, get rid of
5 it on June 9th.

6 Q. But I'm talking about -- actually, I would like to go
7 back to March 7th, the day after the jury verdict:

8 Why not just walk into the logistics department, as
9 the boss, and say, turn it off. We don't need this, because
10 it's your knowledge and hard work that we make our money with,
11 not this software that's been nothing but trouble.

12 Why not just shut it off?

13 A. Well, for one thing, I wasn't the president at that time
14 I became the president after that, the ending of March. When
15 I got on board, it already -- we were already using it. And
16 my assumption is that it was working -- you know, we have to
17 have a way to capture data. So we were using it.

18 We thought we were okay by going back to the
19 original. Subsequently it didn't work that well with taking
20 out the -- basically, improvements. So we did look for
21 something else. And once we switched, yeah, we were done with
22 it.

23 Q. But on April 1st you were the president of the Hawaii
24 division?

25 A. Correct.

1 Q. And you said Mark Dillon didn't use it?

2 A. He didn't use it as we use it. He was the network
3 administrator, so I'm sure that he was updating or doing what
4 any IT person needs to do to maintain the database.

5 Q. Well, isn't it true, ma'am, that Mark Dillon was found --
6 it was found that the changes that Mark Dillon made was found
7 by a jury in March of 2003, right before this period started,
8 to have been infringement?

9 A. Yes.

10 Q. So, would it be fair to say that he used it for
11 infringement?

12 A. No, that's not what I'm saying. Don't mis- -- don't turn
13 my words around.

14 Q. But what was he doing with it? He was developing
15 Mr. Berry's database without his permission; correct?

16 A. I don't think that -- I mean... he -- he updated and made
17 changes, yes, to the database.

18 Q. Yes. And those were found to infringe. That's your
19 understanding?

20 A. Yes.

21 Q. Did you make changes to the database?

22 A. I did.

23 Q. You did?

24 A. Yes.

25 Q. You believe that those changes were not infringement?

1 A. I soon found out that it was infringement, yes.

2 Q. So your use of the database for work was also to change
3 the database; is that correct?

4 MR. BAUMANN: Objection, Your Honor; vague as to
5 period of time. And it's irrelevant, frankly, to the damage
6 phase.

7 MR. HOSODA: Join, Your Honor.

8 THE COURT: I'll allow it.

9 Go ahead.

10 THE WITNESS: Can you restate it, please?

11 BY MR. HOGAN:

12 Q. So, your use of the database was -- for work was also to
13 change the database; is that correct?

14 MR. HOSODA: Again, Your Honor, objection as to
15 time?

16 THE COURT: I'll allow this.

17 A. I changed the database, yes, in order to operate, because
18 we were unable to get ahold of Mr. Berry.

19 BY MR. HOGAN:

20 Q. What did you do to try to get ahold of Mr. Berry?

21 A. I attempted to call on various phone numbers that he had
22 left with us.

23 Q. Did you ever ask Mr. Smith to get in touch with me so you
24 could find Mr. Berry?

25 MR. BAUMANN: Again, I object --

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8 I, Stephen B. Platt, Official Court Reporter,
9 United States District Court, District of Hawaii, do hereby
10 certify that the foregoing is a true and correct transcript of
11 proceedings before the Honorable Susan Oki Mollway, United
12 States District Judge.

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/s/ Stephen B. Platt

21 THURSDAY, APRIL 27, 2006 STEPHEN B. PLATT, CSR NO. 248

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